

**To: Director León Rodríguez, US Citizenship & Immigration Services (USCIS)  
Juliet Choi, Chief of Staff**

**From: Harper Jean Tobin, Director of Policy, National Center for Transgender Equality  
Aaron Morris, Executive Director, Immigration Equality**

**RE: Recommendations Revisions to USCIS Policy for Document Issuance Involving Status and Identity for Transgender Individuals**

**DATE: April 12, 2016**

The National Center for Transgender Equality (NCTE) and Immigration Equality greatly appreciate the steps USCIS has taken in recent years to ensure respect and equal consideration for transgender people and their families. When USCIS updated the Adjudicators Field Manual (AFM) in 2012 to incorporate new procedures for changing gender on USCIS immigration documents, it positively impacted the lives of thousands of transgender people across the United States.

As our knowledge about the needs and lives of transgender people continues to develop, and as federal and state agencies continue to improve their knowledge and gain experience in addressing these issues, we believe it is important that policies and procedures continue to evolve. For this reason we recommend a number of changes to improve the efficiency and accessibility of the process for changing the gender marker on immigration related documentation. We provide detailed language recommendations for updating the AFM in Appendix A. We look forward to collaborating with USCIS in your efforts to implement these updates, and we hope to meet with you soon to discuss how best to put these proposals into effect.

### **1. Clarify the standard for health care provider certifications.**

While the current policy has made record updates simpler and more accessible for many applicants, we have found that some applicants and health care providers are still unclear on the meaning of “appropriate clinical treatment” as it is used in the existing policy. Due to the long history of government agencies requiring proof of specific surgical procedures to process gender updates, many people still assume that such a requirement is implied in the term “appropriate clinical treatment”. Health care providers, desiring to ensure they comply with all requirements and provide accurate information to the government, may not understand that the request to certify “appropriate clinical treatment” is intended to incorporate their assessment of a patient’s individual clinical needs based on contemporary clinical standards. We have received many inquiries from individuals and providers seeking clarification of this language in USCIS’s and other agencies’ policies.

To provide greater clarity, we recommend that USCIS revise the AFM to require certification that the requested gender change “is consistent with the applicant’s gender identity.” At least 16 states plus the District of Columbia and Puerto Rico use standardized forms that request certification of the applicant’s

“gender identity” or “gender identification,” rather than treatment, in order to update driver’s license and state identification cards.<sup>1</sup> USCIS’s Canadian counterpart—Immigration, Refugees, and Citizenship Canada (IRCC)—also uses this language.<sup>2</sup> This language is easily understood by both transgender individuals and health care providers.

## **2. Accept certifications from a range of qualified health professionals.**

USCIS should accept certifications from the full range of licensed health care providers who are qualified to assess and provide treatment under the WPATH Standards of Care, rather than restricting certifications to those provided by physicians. The Standards of Care state that qualified mental health providers who are prepared to assess and diagnose gender dysphoria includes those with clinical training in “psychology, psychiatry, social work, mental health counseling, marriage and family therapy, nursing, or family medicine with specific training in behavioral health and counseling.”<sup>3</sup> This same range of qualified mental health providers may provide appropriate clinical treatment, including psychotherapy related to gender dysphoria, and often are responsible for recommending other types of treatment, such as hormone therapy or surgeries. Other treatments, such as hormone therapy, are managed by a variety of providers, including nurse practitioners and primary care physicians.<sup>4</sup> Licensed non-physician mental health providers are in many cases the primary providers and coordinators of care for people undergoing gender transition, and are therefore often the most appropriate professionals to provide certification. Particularly for transgender people of limited means, access to professional assistance and guidance during transition may be limited to clinical social workers accessible to them through free clinics and other community agencies. Transgender people who receive medical care at community clinics are also frequently treated by nurse practitioners or physicians’ assistants—who in many states are licensed to prescribe medications—instead of physicians.

These licensed healthcare professionals are bound by the same ethical responsibility as physicians, and should be subject to the same requirements that ensure the integrity of provider certifications of gender change. All healthcare professionals would be required to provide a certification (1) with their professional license number, (2) signed under penalty of law, (3) stating that the health professional has treated the individual, or reviewed and evaluated the individual’s medical history, in relation to the individual’s gender transition, and (4) has determined in their professional opinion that the request is consistent with the applicant’s gender identity. These requirements ensure all certifying providers are professionally and legally accountable for the information they submit and establish an adequate audit trail.

Permitting certifications from licensed non-physician providers is particularly important because many transgender people do not have regular access to a doctor. A study published last year in the *American Journal of Public Health* found that 40% of transgender Virginians did not have a primary care doctor—and of those who did, 29% were not out to that doctor.<sup>5</sup> Other studies have also found that as

<sup>1</sup> These states are California, Colorado, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Virginia, and West Virginia.

<sup>2</sup> Immigration, Refugees, and Citizenship Canada, Form CIT 0552 (03-2016), Support for a Change of Sex Designation on an Immigration, Refugees, and Citizenship Canada (IRCC) Document, <http://www.cic.gc.ca/english/pdf/kits/citizen/CIT0552E-2.pdf>.

<sup>3</sup> World Prof. Ass’n for Transgender Health, *Standards of Care of the Health of Transsexual, Transgender, and Gender Nonconforming People*, Seventh Edition, 24 (2011), [http://www.wpath.org/uploaded\\_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf](http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf).

<sup>4</sup> *Id.* at 41.

<sup>5</sup> Judith Bradford et al., *Experiences of Transgender-Related Discrimination and Implications for Health: Results from the Virginia Transgender Health Initiative Study*, 103 AMERICAN JOURNAL OF PUBLIC HEALTH, 1820, 1825

many as 30-40% of transgender people do not have a primary care physician.<sup>6</sup> Because transgender people have disproportionately low incomes,<sup>7</sup> and rely disproportionately on community clinics,<sup>8</sup> they are more likely to have access to non-physician medical and mental health providers than to physicians. Fear or past experiences of discrimination leads many transgender people who do have primary care physicians to avoid coming out to their doctors,<sup>9</sup> and those who do reveal their transgender status are more likely to face discrimination, including denial of care, harassment and assault.<sup>10</sup> Many physicians react to patients who raise such issues with discomfort, ignorance or hostility<sup>11</sup> or refuse to sign a medical certification because of personal bias or professed lack of expertise. Transgender people often find it far more difficult to discuss transgender-related issues with their doctor than with mental health providers or social workers, who may be more comfortable or experienced in addressing their needs.

At least 20 states, the District of Columbia, and Puerto Rico already permit change of a gender designation on a driver's license or state ID based on certification by a licensed non-physician healthcare professional. Many of these states permit any of a range of licensed providers to complete the required certification, including nurse practitioners, physician assistants, psychologists, and clinical social workers—all licensed professions with professional oversight boards and ethical codes. For example:

- At least 20 states, the District of Columbia, and Puerto Rico accept certifications from *psychologists*;
- At least 14 states, DC, and Puerto Rico accept certifications from *clinical/psychiatric social workers*;
- At least 10 states, DC, and Puerto Rico accept certifications from *nurse practitioners*; and,
- At least 9 states, DC, and Puerto Rico accept certifications from *physician assistants*.

USCIS's Canadian counterpart, IRCC, also accepts certifications from psychologists.<sup>12</sup> Permitting licensed non-physician healthcare providers to complete gender change certifications would better comport with contemporary standards of care and make the process more accessible to transgender people, particularly those who are low-income or live in geographically remote and resource-poor areas. At a minimum, we recommend that USCIS accept certification from licensed *physicians, nurse practitioners, physician assistants, psychologists, and clinical/psychiatric social workers*.

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(2013); see also JESSICA M. XAVIER, JULIE A. HONNOLD & JUDITH BRADFORD, *THE HEALTH, HEALTH-RELATED NEEDS, AND LIFECOURSE EXPERIENCES OF TRANSGENDER VIRGINIANS* 17 (2007).

<sup>6</sup> Gretchen P. Kenagy & Wendy B. Bostwick, *Health and Social Service Needs of Transgendered People in Chicago*, 8 INT. J. TRANSGENDERISM 57 (2005) (28% of sample did not have a doctor); Gretchen P. Kenagy, *The Health and Social Service Needs of Transgender People in Philadelphia*, 8 INTERNATIONAL J. TRANSGENDERISM 49-56 (2005) (38% of sample did not have a doctor); Jessica M. Xavier et al., *A Needs Assessment of Transgendered People of Color Living in Washington, DC.*, 88 INTERNATIONAL J. TRANSGENDERISM 31 (2005) (40% of sample did not have a doctor).

<sup>7</sup> Nat'l. Gay and Lesbian Task Force & Nat'l Ctr. for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 22 (2011), available at <http://www.transequality.org/issues/national-transgender-discrimination-survey> (15% of respondents in a national survey reported making under \$10,000 per year, nearly four times the rate of this income category for the general population).

<sup>8</sup> *Id.* at 73 (28% of respondents relied on community health centers or clinics for primary care; 4% relied on emergency rooms).

<sup>9</sup> *Id.* at 75.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 76.

<sup>12</sup> Immigration, Refugees, and Citizenship Canada, Form CIT 0552 (03-2016), Support for a Change of Sex Designation on an Immigration, Refugees, and Citizenship Canada (IRCC) Document, <http://www.cic.gc.ca/english/pdf/kits/citizen/CIT0552E-2.pdf>.

### 3. Alternative Forms of Acceptable Evidence

We commend USCIS for recognizing that requiring transgender people to make multiple efforts to seek provider certification of a gender change for each federal and state agency is burdensome and unnecessary. While some of the standards are similar, minor technical differences in agency policies or gaps in time may mean that individuals are required to make multiple efforts to obtain provider certifications for different agencies. USCIS already accepts updated birth certificates and passports, as well as court orders for gender change, as evidence of a gender change in lieu of a provider certification. We recommend USCIS accept state-issued driver's licenses and identification cards as additional and sufficient forms of evidence of a gender change.

In all 50 states, an individual must have already submitted healthcare provider certification of gender change in order to update the gender marker on their driver's license or non-driver state ID card. Accordingly, evidence of an amended state-issued identity document or immigration document demonstrates that the applicant has already gone through the process of presenting health care provider certification. USCIS already recognized state-issued driver's licenses and ID cards as legitimate proof of identity for many purposes including the Form I-9 and the E-Verify program. In addition, the Office of Personnel Management already recognizes these documents as adequate for updating gender in federal employee personnel files.<sup>13</sup> This approach is readily administrable, proven, and saves effort for individuals and the agency in cases where adequate documentation already exists.

### 4. Eliminate the requirement to provide DEA registration number

While most of the data elements currently required for provider certifications are necessary and appropriate, providers' Drug Enforcement Administration (DEA) registration numbers should not be required. This use of DEA numbers is contrary to their purpose as defined by the DEA, and is sometimes resisted by providers. The legal purpose of DEA numbers is to track the prescription of controlled substances, not to be used to otherwise monitor the activities of physicians. Physicians may be wary of supplying their DEA registration numbers for purposes other than prescribing medications due to fears of drug diversion or putting themselves at risk for possible unauthorized use of their DEA numbers. The requirements for a provider's office letterhead, professional license number, and signature under penalty of law are more than sufficient to prevent fraud and ensure legitimacy.

Nearly every state has procedures for gender change on driver's licenses and birth certificates, and in many states certifications by physicians or other health care providers are accepted as proof of gender change. Yet *no* state requires such certifications, for *either* driver's licenses or birth certificates, to include a DEA registration number. The State Department and the Social Security Administration have also stopped collecting DEA numbers with provider letters for gender changes. The successful use by these state and federal agencies of gender change procedures that do not rely on collecting DEA registration numbers demonstrates that it is feasible and preferable for USCIS to eliminate this data requirement for provider certifications.

### Conclusion

We once again thank USCIS for your efforts to increase fairness and access for transgender people and look forward to working with you to continue improvements. We believe that the implementation of

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<sup>13</sup> Office of Personnel Management, *Guide to Personnel Recordkeeping* 4-6 (2011) (requiring "acceptable evidence of identity in the new gender," and noting that some individuals may not be able to obtain an update driver's license or state ID and that a passport is also acceptable).

our recommendations will not only better protect the rights of transgender individuals, but also increase the efficient use of administrative resources by streamlining the process for record updates. Our detailed recommendations for revising AFM Chapter 10.22 are presented in Appendix A. Appendix B presents a list of types of health care provider certifications currently accepted to change gender on driver's licenses and state identification cards in the 50 states, the District of Columbia, and U.S. territories.

## APPENDIX A

### **10.22 Document Issuance Involving Status and Identity for Transgender Individuals (Added 4/10/2012; PM-602-0061; AD12-02)**

USCIS issues a variety of documents that show identity and immigration status in the United States. These include, but are not limited to, Employment Authorization Documents, Refugee Travel Documents, Permanent Resident Cards, and Naturalization Certificates. Applicants who ~~claim to~~ have changed their gender may seek issuance of these types of documents reflecting the new gender. While some of these documents indicate the individual's gender, and the applicant's gender may sometimes have bearing on underlying issues of eligibility for immigration benefits (such as an approval of a Petition for Alien Relative, ~~derivative spouse status, or marriage to a U.S. citizen for section 319(a) naturalization~~), the purpose of the document itself is to document the individual's identity and immigration status. Therefore, USCIS will issue an initial or amended document reflecting the individual's post-transition gender if the individual presents the following:

- An amended birth certificate, passport, or court order recognizing the new gender; or
- Medical certification of the change in gender from a ~~licensed healthcare provider who is qualified to assess and diagnose gender dysphoria licensed physician (a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.))~~. This is based on standards and recommendations of the World Professional Association for Transgender Health<sup>14</sup> who are recognized as the authority in this field by the American Medical Association. Medical certification of gender transition received from a ~~licensed healthcare provider physician (an M.D. or D.O.)~~ is sufficient documentation, alone, of gender change. Additional information about medical certifications:
  - For the purposes of this chapter, ~~a licensed healthcare provider includes licensed physicians (an M.D. or D.O.), nurse practitioners, physician assistants, psychologists, and clinical/psychiatric social workers. only an M.D. or a D.O. qualifies as a licensed physician~~ Officers may accept medical certifications from any number of specialties as well as from general practitioners ~~in these fields~~.
  - Statements from persons who are not licensed physicians, ~~such as psychologists, physician assistants, nurse practitioners, or social workers; health practitioners, chiropractors, are not acceptable~~.
  - The medical certification should include the following information:
    - ~~Health care provider's Physician's~~ full name;
    - ~~Professional Medical~~ license or certificate number;
    - Issuing state, country, or other jurisdiction of ~~professional medical~~

<sup>14</sup> World Prof. Ass'n for Transgender Health, *Standards of Care of the Health of Transsexual, Transgender, and Gender Nonconforming People*, Seventh Edition, 23-24 (2011), [http://www.wpath.org/uploaded\\_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf](http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf).



license/certificate;

- ~~Drug Enforcement Administration registration number assigned to the doctor or comparable foreign registration number, if applicable;~~
  - Address and telephone number of the ~~health care provider~~physician;
  - Language stating that the applicant's requested gender change is consistent with the applicant's gender identity ~~(male or female)~~;
  - Language stating that ~~the health care provider he/she~~ *has either treated the applicant in relation to the applicant's change in gender or has reviewed and evaluated the medical history of the applicant in relation to the applicant's change in gender* and that ~~the provider he/she~~ has a ~~provider~~doctor/patient relationship with the applicant; and
- The applicant must submit evidence that any name change was completed according to the relevant state or foreign law;
  - The applicant may also be asked to submit acceptable evidence of identity in the new gender, if available. State law and foreign laws vary as to whether a driver's license or other form of government issued identity document may be issued reflecting a gender change. If evidence of change of gender in the identity documents is not obtainable because of state, local or foreign requirements, the document may still be issued in the new gender based on the medical certification; and
  - A recent facial photograph that reflects a good likeness of, and satisfactorily identifies the applicant must be submitted. The photograph must agree with the submitted identification evidence and reflect the applicant's current and true appearance. This can be submitted with the application or provided through biometrics collection at an ASC.

NOTE: Proof of sex reassignment surgery is *not* required to issue the requested document in the new gender and evidence of such surgery will not be requested. If such surgery has taken place, a statement to that effect in the medical certification is sufficient to establish the fact. USCIS will not ask for records relating to any such surgery ~~or any other specific treatment~~.

**APPENDIX B**  
**US Driver's License Policies by Type of Provider Certification Accepted**

<b>Broad range (15 + DC, PR)</b>	Alaska Connecticut Delaware District of Columbia Hawaii Maine Massachusetts New Jersey New Hampshire New Mexico Ohio Oregon Pennsylvania Rhode Island Virginia Washington Puerto Rico	(SW/P/C/PA/NP/PSY) (P/C/SW) (P/C/SW) (P/C/SW/Other) (P/NP/PA/PSY/SW/C/MFT) (P/C/SW/Other) (P/C/PSW/Other) (P/C/SW/Other) (P/RN/CSW/C) (P/C/PSW/Other) (P/C/PSY) (P/NP/PA/CS/C/SW/Other) (P/C/SW) (P/C/SW) (P/NP/PSY/SW/C) (P/PSY/C/PA/NP) (PSY/C/SW/Other)
<b>Limited range (4)</b>	California New York Vermont Illinois	(P/PSY) (P/PSY) (P/PSY) (P/PSY)
<b>Physician only (non-surgical) (10)</b>	Arizona Colorado Florida Idaho Indiana	Minnesota Nebraska Nevada Wisconsin West Virginia
<b>Physician only (surgical) (10)</b>	Alabama Georgia Kansas Kentucky Louisiana	Michigan Missouri Oklahoma Tennessee Wyoming
<b>Other, unclear, or unwritten policy (11 + territories)</b>	Arkansas Iowa Maryland Mississippi Montana North Carolina	South Carolina North Dakota South Dakota Texas Utah Other U.S. territories

<b>NP</b>	Nurse Practitioner	<b>P</b>	Physician
<b>C</b>	Counselor or Therapist (incl. SW, PSY)	<b>PA</b>	Physician Assistant
<b>CSW</b>	Clinical Social Worker	<b>PSW</b>	Psychiatric Social Worker
<b>MFT</b>	Marriage Family Therapist	<b>PSY</b>	Psychologist
<b>Other</b>	Any other licensed health care provider	<b>SW</b>	Social Worker





**U.S. Citizenship  
and Immigration  
Services**

June 16, 2016

Aaron Morris  
Executive Director  
Immigration Equality  
40 Exchange Place, Suite 1300  
New York, NY 10005

Dear Mr. Morris:

Thank you for your April 12, 2016 letter. U.S. Citizenship and Immigration Services (USCIS) appreciates your recommendations for revising our policies and procedures relating to changing the gender marker on USCIS-issued documentation reflecting immigration status and identity.

USCIS is reviewing your recommendations and considering your suggested revisions. We will contact you in the coming weeks to update you on our progress.

Thank you again for your letter and interest in this important issue. Harper Jean Tobin, who co-signed your letter, will receive a separate, identical response. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

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León Rodríguez  
Director



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June 16, 2016

Harper Jean Tobin  
Director of Policy  
National Center for Transgender Equality  
1400 16<sup>th</sup> Street, NW, Suite 510  
Washington, DC 20036

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